MINISTER'S MESSAGE

As Manitoba farmers know, operating a farm in these times, whether it be large or small, specialized or mixed, is a complex undertaking. In the area of financing especially, it is essential for every farmer to be aware of all his/her legal rights.

To assist farmers in this regard, Manitoba Agriculture has put together a special package on legal rights and farm financing. The information provided in the two book/three pamphlet series will act as a guide to answering many of the questions commonly asked.

It is important to remember that each farming operation is unique. This information is to be used only as a guide and farmers are encouraged to contact their lawyers, accountants, and Manitoba Agriculture Specialists to help in making key decisions.

SPECIAL ACKNOWLEDGEMENTS

The author would like to extend her thanks to the following people who gave their time and expertise to this project: G. Therrien (Manitoba Agriculture), M. Riese, B. Kelly (Canadian Imperial Bank of Commerce – Farm Division), F. Homann (Credit Union Central), R. Witherspoon (Farm Credit Corporation), J. MacDonald (Trustee in Bankruptcy – Dunwoody Ltd.), Professor A. Braid (Faculty of Law – University of Manitoba), D. Pambrun (Project Leader), M. McEwoy (Project Leader), J. Duncan (typist), J. Dewar (typist).

NOTE

These materials have been prepared to give a general view of the subject and to promote thought and discussion. They are not designed to present a complete and precise statement of the law, and the law as presented may be changed in some particulars by subsequent decisions or enactments. The materials should therefore not be used by readers as a basis for resolving their specific legal problems, which may have special facts giving rise to particular legal implications and considerations.

TABLE OF CONTENTS

Page

Introduction 6
Types of Security 7
Securities In General 7
Signing Security Agreements 7
Uses of Security in Loan Agreements 7
Long Term Financing 8
Real Property Mortgage 8
Defined 8
Mortgage Terms 8
Falling Behind in Mortgage Payments 8
How Sale by Lender Affects Debt 9
How Defaulting Payments Affect Home Ownership 9
What Happens to A Mortgage If Death Occurs 9
Corporate Farms 9
Intermediate and Short Term Financing 10
Chattel Mortgage 10
Defined 10
Defaulting on Payments 10
Rights When Goods Are Seized 10
Rights When Defaulted Payments Are Brought Up To Date . . 11
Seizure of Goods When Most of The Loan Is Paid 11
Seizure of Exempt Property Under Payment Default 11
Security Under The Personal Property Security Act 11
Defined 11
General Security Agreements 11
Selling Assets Under G.S.A. 12
Excluding Assets from G.S.A. 12
Defaulting on Payments 12
Section 178 of Bank Act 12
Defined 12
Defaulting on Payments 13
Conditional Sales Agreement 13
Defined 13

Defaulting on Payments 13
Rights When Goods Are Seized 13
Trade Credit 13
Defined 13
Defaulting on Payments 14
Seeking Court Judgements 14
Rights When Unable To Satisfy Court Judgement Immediately 15
Rights Under a Writ of Execution 15
Promissory Note 16
Defined 16
Defaulting on Payments 16
An Overview 16
Sources of Credit 17
Chartered Banks 17
What Chartered Banks Will Lend Money For 17
Types of Security 17
Long Term Loans 17
Intermediate Loans 18
Short Term Loans 18
Personal Guarantees 18
Credit Unions and Caisses Populaires (CU&CP) 18
What Will They Lend Money For 19
Types of Security Required 19
Long Term Loans 19
Intermediate and Short Term Loans 19
Near Banks 19
What Will They Lend Money For 19
Types of Security Required 19
Manitoba Agricultural Credit Corporation (M.A.C.C.) 19
What Will It Lend Money For 20
Types of Security Required 20
Farm Credit Corporation (F.C.C.) 20
What Will It Lend Money For 20
Types of Security the F.C.C. Requires 20
Federal Business Development Bank (F.B.D.B.) 21
What Will It Lend Money For 21
Types of Security Required 21
Dealers And Suppliers 21
Types of Financing Offered 21
Private Sources 21
Types of Financing Offered 21
The Farming Operation 22
Purchasing Land 22
Types of Security Agreements Available 22

Steps to Take With Mortgage Financing 22
The Dower Act 23
Effects of The Dower Act on Land Sales 23
Getting a Clear Land Title 23
Easements 23
Purchasing Farm Machinery and Equipment 24
Types of Financing Available 24
The Farm Machinery and Equipment Act 24
Procedure Followed Under The Act When Payments Are Defaulted 24
Other Provisions of the Act 25
Purchasing Intermediate and Current Assets 26
Types of Financing Used 26
Purchasing Consumer Goods 26
Types of Financing Available 26
Statutes Affecting the Purchase of Consumer Goods 27
Sale of Goods Act 27
Consumer Protection 27
Repairs To Buildings (Purchasing a Service and Materials) 29
Types of Financing Available 29
Safeguards Against Unsatisfactory Work 29
Protection Against Property Liens 30
Summary 30
Facing Financial Difficulties 31
Steps to Take to Avoid Financial Difficulty 31
Steps to Take When Unable to Make Payments 32
Possible Solutions 32
Management Decisions 32
Arrangements With Creditors 32
Refinancing The Loan 33
Orderly Payment of Debt Provisions 33
A Proposal Under The Bankruptcy Act 34
Liquidation of Assets 35
Tips 35
Bankruptcy – The Last Resort 36
Difference Between Bankruptcy and Receivership 36
Farmers Exempt From Being Petitioned Into Bankruptcy 36
Consent For Appointing A Receiver 36
Steps in Bankruptcy 36
Responsibilities of the Bankrupt Debtor 37
Conclusion 38
References 39
Appendix 41
Glossary 43

INTRODUCTION

As manager of a farm business, whether you want to borrow cash for the purchase of farm machinery or land or you wish to obtain credit in any form, it will be necessary for you to sign some kind of document before such a loan is granted. Your signature means you are agreeing to certain terms and the lender (or creditor) is guaranteeing you certain rights. That is what this booklet is all about – the types of agreements you are likely to sign to obtain credit and the rights, remedies and responsibilities of all parties concerned. This booklet has also been designed to be a guide to the sorts of options open to a farmer who is facing severe financial difficulties.

With the decreasing value of land and the hard economic times, farmers are being seriously affected. However, with a better understanding about credit agreements and their variations, a farmer will be better able to make decisions on how to approach the business of financing a farming operation.

This booklet is intended as a guide only. It is intended to provide you with knowledge as to the types of credit available and the rights, responsibilities and remedies attached to the different types. It will not provide an individualized answer to your special needs and financial difficulties. These can best be dealt with by professionals in the field – by your lawyer, your accountant, your bank manager or your agricultural representative.

TYPES OF SECURITY

There is a wide variety of security (credit) documents available today and in this booklet we will examine seven of the most common types:

1) Real property mortgage
2) Chattel mortgage
3) Security under the Personal Property Security Act (General Security Agreement)
4) Section 178 Bank Act security
5) Conditional Sales Agreement
6) Trade credit
7) Promissory note

Securities in General

A security agreement is a pledge of property to the lender. This property can be seized in the event you default on your payments.

Signing Security Agreements

It is important to realize that if security is given for one purpose, this security cannot be applied to another credit arrangement. This is best explained by an example:

John has a mortgage on his land with the Bank having security of $100,000.00. The loan outstanding is only $20,000.00. If the Bank then gives an operating loan of $40,000.00, an additional security agreement must be provided as the mortgage security could not be used in case of default in payment of the operating loan unless the mortgage document specifically provided for the taking of future advances by the bank. Each loan requires its own security agreement.

Uses of Security in Loan Agreements

When dealing with a Chartered Bank (eg. Canadian Imperial Bank of Commerce, Royal Bank, Bank of Montreal, etc.) they often request that you sign a Section 178 Bank Act Security Agreement as well as a General Security Agreement. This does not mean that they get double the security, it only means that their interest in the security is better protected. The Bank

Act is a federal act allowing the Chartered Banks to take certain types of security and to register that interest with the Bank of Canada. However, they often require a General Security Agreement (G.S.A.) which was created by the Personal Property Security Act, a provincial statute, because a G.S.A. can be registered in the Personal Property Security Registry and the Bank will be notified if someone else takes the same property as security. This means the Bank is better protected in case of a default in payments. But it does not mean that the Bank is taking a little extra for themselves.

Long Term Financing

Real Property Mortgage

Defined

A Real Property Mortgage (land mortgage) is a legal document giving an interest in the land to the lending institution, as security for the loan. It is a document that gives an interest in a specific piece of property to secure a specific sum of money.

Mortgage Terms

Most lending institutions have their own standard form Mortgage documents which cannot be changed. It is very important to read the entire document and make sure that parts you do not understand are explained to you. Do not sign unless you fully understand the document.

The first part of any mortgage document will begin by giving a description of the land and the amount of money being lent, what the amount of the schedule of payment is to be and the amount of interest to be paid. These figures are required to be given by law.

Other clauses may include the duty of the borrower to insure the property, to not commit an act of waste (destroy the land by your own actions), to pay all taxes and rates and to pay interest on the money borrowed.

It is important to note whether one can prepay the entire mortgage or part of it. Some lending institutions will not permit prepayment. If in a few years time prepaying is desired, then you should avoid this type of mortgage document and request a change. However, most lenders will allow prepayment with a three to six months interest penalty (bonus). If the mortgage is for more than five years and a five year period has passed, the lender must accept prepayment.

Falling Behind in Mortgage Payments

Upon default of mortgage payments, the lender can force the sale of the property or take full title to the property by way of foreclosure if a sale is not possible. It is possible for the borrower to stop a sale at any time before the sale takes place by paying what is owing plus the costs the lender has incurred in starting the sale process.

How Sale By the Lender Affects Debt

When a loan secured by a real estate mortgage is in default for 6 months, the lender has two options by which to recover the money: by foreclosure or by suing for the amount owing, but not both.

If the lender decides to reposses by foreclosure, the first step is to attempt to sell the property at public auction. If the property is sold and there is money left after the debt has been discharged and the costs are paid, the surplus is returned to the borrower. However, if the highest sale bid is below a reserve price (ie. to satisfy the money secured by mortgage and costs) the sale is aborted and the lender can seek a final order for foreclosure to obtain title to the property.

Once the lender has taken title, the farmer's obligation is discharged and the debt is extinguished. The lender may then sell the property and the borrower is not entitled to any surplus and cannot be sued for the balance owing.

If the lender elects to sue he asks the court for full recovery of the debt. (By suing he forfeits his right to collect by foreclosure.) Based on the assets of the borrower, the lender is entitled to recover the full amount of the debt.

How Defaulting Payments Affects Home Ownership

If your house is listed in the description of property on the mortgage document then it can be lost if you should default. If the house is not to be used as security, make sure it and property around it are excluded from the mortgage document.

What Happens To A Mortgage If Death Occurs

The burden of mortgage payments will be passed on to the heirs, executors and administrators of the estate. The Farm Credit Corporation, Manitoba Agricultural Credit Corporation and many other lending institutions have life insurance options which will repay the mortgage in the event of the borrower's death so the family is not stuck with the mortgage payments. If the lending institution being dealt with does not have life insured mortgages, coverage can be purchased from most life insurance companies.

Corporate Farms

If the farm is incorporated, the long-term financing options are in the form of a Real Property Mortgage or a debenture.

A debenture is more flexible than the Land Mortgage as it is not tied to just one specific piece of property. This means the lending institution takes a security interest in all of the corporations assets, rather than a specifically defined piece of property. On default it enables the secured party to appoint a receiver to assume control of the entire business.

Intermediate and Short Term Financing

Chattel Mortgage

Defined

A chattel mortgage is similar to a land mortgage except that the lending institution gives a loan on the security of the goods purchased with the loan or on goods the borrower already owns. The borrower signs a document transferring title of the goods to the lender. The borrower retains possession of the goods as long as payments are kept up.

Defaulting on Payments

Upon default, lenders can do two things:

- They can seize the goods given as security and sell them, and/or
- They can obtain a judgment from the court for payment.

If upon sale of the goods, the debt has still not been discharged, the lender can then go to the courts and seek a judgment for the remaining amount. If upon sale, there is money left over, this must be returned to the borrower.

Rights When Goods Are Seized

The Consumer Protection Act, which applies to all retail sales of goods made in the ordinary course of business (further discussion of this Act under "Purchasing Consumer Goods"), places restrictions on the lender who seizes goods for payment of the debt.

Some of these restrictions are:

- The goods cannot be seized unless the borrower or an adult member of the family is present and aware of the removal;
- Only those goods listed as security can be seized;
- Seizure can take place only between 7 a.m. and 9 p.m. and cannot take place on Sundays or holidays;
- If the borrower is uncooperative and orders the collectors off the property, for whatever reason, they must leave and the lender then must get a court order for the seizure of the goods;
- If the borrower has a claim against the lender, no seizure can take place until the claim is settled;
- The lender or his collection agency cannot harass the borrower to get payment.

After your goods have been seized, you have twenty days to get the goods back by paying the amount due plus the cost of storing the goods. Therefore, within 48 hours of the seizure (not including Saturday, Sunday and holidays) the lender must give the borrower written notice of the date of seizure, the amount that must be paid to get the goods back, the date by which the goods can be claimed and where the goods are being stored.

If the borrower has had his/her rights violated, he/she should lay a complaint with the Consumer Bureau which has the authority to get a court order ordering the return of the goods.

Rights When Defaulted Payments Are Brought Up To Date

If after defaulting payments are resumed, the lender cannot demand payment in full. Lenders can only demand that the arrears and default charges be paid and cannot demand full payment.

Once you have paid the arrears and default charges, you can continue making regular payments according to the terms of the contract. Also, lenders cannot force you to forfeit your interest in the goods once you have paid the arrears.

Seizure of Goods When Most of the Loan is Paid

Goods cannot be seized unless a court order or the written consent of the borrower is obtained. This procedure is required to seize an item secured under a chattel mortgage when the borrower owes less than 25% of the total amount of the original loan.

Seizure of Exempt Property Under Payment Default

Exempt properties are assets that are free from seizure in case of a judgment from the courts. The Executions Act, which will be discussed in greater detail under "Trade Credit", lists the exempt property. However, it only applies to unsecured property. If you have given the property as security, it can be seized by the lender.

Security Under the Personal Property Security Act

Defined

The Personal Property Security Act (P.P.S.A.) is a Manitoba Statute which permits lending institutions to take as security a general security agreement (G.S.A.). The *Act* also created the Personal Property Register where G.S.A., chattel mortgages and conditional sales agreements can be registered, informing other possible lenders of the existence of prior security interest in the property.

General Security Agreements

The General Security Agreement (G.S.A.) allows the lending institution to loan money to a borrower on the security of all assets (machinery, growing crops, inventory, etc.) both present and future. It is an all-encompassing document and the farmer should be aware that the G.S.A. means he is giving up all his possessions, present and future, including growing crops, as security. If he/she buys something after signing a G.S.A., this item is automatically included in the G.S.A.

Selling Assets Under a G.S.A.

Assets can be sold in the ordinary course of your operation.

However, all proceeds from the sale become part of the security given to the lender.

The borrower must keep the secured property at the location stated in the G.S.A. If there is need to move it, the lending institution must be notified.

Excluding Assets From a G.S.A.

A G.S.A. can be specific, listing only certain assets that are to be included. It is advisable for a farmer to keep some of the property that is exempt under the Judgments Act and the Executions Act free from any security agreement. (What is exempt will be discussed later.) If this is done in the event of serious financial difficulties, the farmer will be able to retain possession of certain properties in order to make a fresh start. Exempt property can be seized if given as security to a lending institution but cannot be seized by lenders not taking security on such property.

Defaulting on Payments

Upon default, the lender has the right to seize the secured property to cover the outstanding debt and/or to seek judgment from the courts for the remaining amount owing. The Personal Property Security Act allows a lender to follow both courses of action if necessary.

The security agreement itself will lay out the lender's remedies upon default and so the borrower should make sure these are explained to him.

Section 178 Bank Act Security

Defined

Section 178 of the Bank Act allows the Chartered Banks to lend money to any farmer for purchase of seed, fertilizer, binder twine, livestock, agricultural implements and equipment and for the alteration, repair or improvement of equipment, implements, electrical systems, fences, buildings and other forms of improvement. The loan is secured by a document giving the Bank a security interest in the goods to which the loan is applied or in any other of the farmer's assets which the Bank feels is needed to secure the loan. For example, if a farmer borrowed money for seed grain, the bank would take a security interest in the seed grain itself, in any further crops and if necessary, in a tractor or seeder, etc. Most farmers dealing with the Banks probably have given the Bank Section 178 security. If unsure of what security has been given, ask your banker.

Similar to a G.S.A., the security given under a Section 178 agreement can be applied to future advances. In fact it forms a line of credit, that is, a maximum amount is set that a Bank will lend to a farmer at any one time.

The loan outstanding can fluctuate up to that amount. The loan is secured by a continuing pledge of security under Section 178.

Defaulting on Payments

A section 178 Security document gives the Bank the right, on default of payment of the loan, to seize and sell the property listed in the document. As a section 178 loan is a secured loan, it is not subject to the Executions Act which lists exempt property.

Conditional Sales Agreement

Defined

It is a written time sale agreement whereby goods are purchased on credit and the seller arranges the financing for the buyer. Possession and the use of the goods are obtained immediately but ownership of the goods is not transferred until the goods have been fully paid for.

Defaulting on Payments

In this event, lenders have two options. They can either seize the secured goods and sell them or they can sue for the balance owing and obtain a judgment. Unlike a chattel mortgage, lenders must choose one option or the other and not both. If they choose to seize the goods and the proceeds from the sale of those goods do not cover the debt, lenders are out of luck. The debt is cancelled and the borrower is under no further obligation to pay.

If the lender chooses to sue for payment, then the lender and the borrower are both subject to the court's judgment.

Rights When Goods are Seized

As discussed under chattel mortgages, the Consumer Protection Act can provide certain safeguards for the borrower. As with chattel mortgages, if less than 25% of the total amount owing is still outstanding, a court order is required before the goods can be seized.

If an individual feels that the lender is wrong in seizing goods, order the collector off the property and he/she must go. The lender must then get a court order to seize the property. At this point, seek legal assistance.

Trade Credit

Defined

Trade credit includes such things as charging a grain purchase to your account with the supplier or buying clothes with a credit card. Trade credit is essentially a short term loan, usually with a 30 day term. After the 30 day period, interest will be charged on the amount outstanding. The amount of interest is generally higher than what is offered from the banks on a 'line of credit'.

Defaulting on Payments

• Purchase of Goods

Since no security has been given, the seller cannot simply come and seize the goods. The seller may hire a collection agency to collect the debt. A collection agency cannot seize property or take legal action against the buyer. They can only proceed to encourage you to pay the bill. This agent cannot harass or threaten you. He or she can only call between 7 a.m. and 9 p.m. and not at all on Sundays or holidays. If the seller fails to get what is owing to him this way he will go to the courts to get a judgment. Once a judgment is obtained, the seller can apply to the court for permission to collect the debt in a manner most effective for the seller. The most common processes are: a Garnishing order to be attached to wages, bank accounts, rents, etc; a Writ of Execution, directing the bailiff to seize and sell the assets of the buyer to satisfy the judgment; an examination of judgment of the debtor or; an application for sale of land in payment of the judgment.

• Purchase of Services and Materials

Under The Builder's Liens Act, a person providing materials and services (i.e. building supplier, carpenter, electrician, etc.) for the improvement of real property (land and buildings) can claim a lien against the real property the work was done on or for which the goods were supplied if he/she is not paid. A lien gives unpaid workers or suppliers the right to register in the Land Titles Office claims against your property for their wages or costs. Employees of the contractor also can file a lien against your property if, for some reason, the contractor does not pay them.

As further protection, The Builder's Lien Act entitles you to hold back 7 1/2% of the total cost of work, services and materials for 40 days after the contractor has finished the job. Then if a supplier or employee files a lien within the 40 day legal limit, the money that was held back to pay them can be used.

Never prepay in full. Make sure the work is done before paying and that no liens have been filed against you. Once you have notice of a lien against your property, do not pay the contractor from the 7 1/2% holdback. Consult a lawyer immediately for the proper course of action.

The existence of liens can be traced by going to the Land Titles Office and for a small fee having the title searched.

If one fails to pay, expect a lien to be filed against the property at the Land Titles Office. This debt is payable before any other debt you may have, even secured debts.

Seeking Court Judgments

• Small Claims Court

If the debt does not exceed $1,000.00 and does not involve a title to land,

or a claim against a business in bankruptcy, it can be heard in Small Claims Court of the Court of Queen's Bench. You will be served with a claim filed by the seller outlining what he is claiming from you and when to appear in court. A seller has six years to file a claim from the date the debt was made by the debtor, so he need not claim his debt immediately.

If you disagree with the debt a Notice of Objection and Defence must be filed within 16 days after service. In this case the trial would move to the Court of Queen's Bench.

When appearing in Small Claims Court, your case will be heard by a clerk of the court, rather than a judge. It is encouraged that the seller and buyer state their own cases. Legal assistance is not necessary.

If an individual chooses not to appear in court when called to do so, a judgment may be granted in default.

Once a judgment is filed, it becomes a decision of the Court of Queen's Bench. If the seller's right to the debt has been upheld he can seek to enforce the judgment in one of two ways:

- He/she may get a Garnishing order to be attached to wages, bank accounts, rents, etc.
- He/she may get a Writ of Execution, directing the bailiff to seize and sell the assets of the buyer to satisfy the judgment.

- **Court of Queen's Bench**

If the debt is over $1,000.00 it will be started in the Court of Queen's Bench. In this case it would be advisable to seek legal assistance, although it is not necessary.

The proceedings are started by serving upon you a Statement of Claim. You must then file a Statement of Defence within 16 days of service. The trial will be heard by a judge of the Court of Queen's Bench. If you do not file a Statement of Defence, a default judgment will be entered against you.

If there is a judgment made against an individual, the rest of the proceedings are similar to those in Small Claims Court.

Rights When Unable to Satisfy Court Judgment Immediately

A court judgment is enforceable for ten years and can be renewed for a further ten years. If you move out of the province, a court judgment can be transferred to certain other jurisdictions (i.e. other provinces) under the Reciprocal Enforcement of Judgments Act.

Rights Under a Writ of Execution

Any of your goods can be seized unless they are exempt property under the Judgments Act or the Executions Act, Manitoba statutes.

- **Judgments Act**

The following property is exempt from seizure under this Act:

1) farm land where the farmer resides or cultivates and the area is not more than 160 acres;
2) houses, stalls, barns and fences on the debtor's farm.

- **Executions Act**

The following property is exempt from seizure under any Writ of Execution issued by a Manitoba court:

- furniture and household furnishings and appliances reasonably necessary for one household and not exceeding $4,500.00 in total value;
- clothing;
- food and fuel necessary for six months;
- if the debtor is a farmer,
  - all animals, farm machinery and equipment necessary for the proper and efficient conduct of his or her agricultural operation for the next twelve months;
  - one motor vehicle, if it is required for agricultural operations;
  - the seed sufficient to seed all the land of the debtor under cultivation;
  - health aids needed for the debtor or his/her family;
  - tools, implements, and professional books not exceeding $7,500.00 used by the debtor in his or her trade or to carry on business.

Promissory Note

Defined

It is a signed document containing a written promise to pay a certain sum of money to a specified person, either in fixed or regular payments, or in one lump sum.

Defaulting On Payments

The procedure is the same as that described under trade credit. However, with a promissory note, lenders sometimes also require a security agreement, such as a Chattel Mortgage, General Security Agreement or Conditional Sales Agreement, in which case, the secured goods can be seized.

An Overview

You have just been provided with an overview of what type of security may be expected when taking out a loan. We will now look at which lending institutions ask for these different types of security and for what they will lend money. Then we will examine the use of credit in different aspects of your farming operation. However, before moving on, it is important to remember one thing – READ ANY DOCUMENT BEFORE SIGNING IT AND UNDERSTAND THE TERMS INCLUDED IN IT. Make sure the document is fully explained and clear knowing what is being signed away. It is advised that you consult your lawyer before signing a security document, and not after, when you have already committed yourself.

SOURCES OF CREDIT

There are many different types of lending institutions, each offering a different service. The following discussion will be a survey of these various institutions, the type of security they take and what they will lend money for.

Chartered Banks

A Chartered Bank is a federally incorporated and regulated body, governed by the Bank Act. There are 11 Chartered Banks in Canada – The Canadian Imperial Bank of Commerce, The Royal Bank, The Bank of Montreal, The Toronto Dominion Bank, The Bank of Nova Scotia, The National Bank of Canada, The Mercantile Bank of Canada, The Bank of British Columbia, The Continental Bank of Canada, The Canadian Commercial Bank and The Northland Bank.

What Chartered Banks Will Lend Money For

The Chartered Banks will provide loans for long, intermediate and short term financing.

Types of Security

All security that the Banks will take, are taken because they are empowered to do so by federal statute, primarily the Bank Act.

Several types of security agreements are used by the Banks for different situations. The Banks can offer the farmer assistance in choosing the best security agreement for which the loan is required. For each new loan, a new security agreement is needed, unless the security agreement provides for future advances on the same security (eg. a G.S.A., or a Section 178 Security).

i) Long Term Loans

The long term loans usually involve the Banks taking a Real Estate Mortgage, or if the farm is incorporated, a Debenture. If the loan is required for the purchase of farm land or house, the law requires that a Real Estate Mortgage be taken. If the principal residence (the family home) is included in the mortgage deed, then it can be sold by the Bank should a default in payments occur.

ii) Intermediate Term Loans

This type of financing is usually required for the purchase of farm machinery, trucks, cars, etc. The Chattel Mortgage was once very popular with the Banks but with the introduction of the General Security Agreement, farmers can expect to be required to provide security under the G.S.A. as well as under Section 178. Lending to farmers has become a high risk for the Banks and so the greater security of the G.S.A. is required.

iii) Short Term Loans

The Chartered Banks are the only institutions capable of lending money on the basis of Section 178 security. Loans for short term operational needs, such as purchase of seed, fertilizer, etc. are covered by Section 178 security. Section 178 security may also be used to cover more intermediate type loans for the purchase of equipment, implements, etc. Farmers should not be surprised or concerned if a G.S.A. is requested along with the Section 178 agreement. This does not mean giving up more, but it does give the Banks an assurance that they will have priority in collecting their debts, in the event that a failure to make payments occurs. Operating loans are renewed and reviewed yearly.

Personal Guarantees

If the farming operation is incorporated the Banks will often require a personal guarantee along with the security agreement. A personal guarantee means agreement to pay the debt if the corporation does not. In effect, this means that the limited liability given to incorporation is nullified. Although it is highly undesirable from the farmer's point of view to give a personal guarantee, it is also sometimes impossible to get the loan without it. Faced with this situation, the farmer must try to assess, with the professional assistance of an accountant or an agricultural consultant, the likelihood of default and whether or not the loan is a necessity at this point in time under these conditions.

It is possible to place a maximum limit on the personal guarantee, up to a certain amount, and this should certainly be discussed with the Bank and stated in the document.

Credit Unions and Caisses Populaires (CU&CP)

They are lending institutions provincially created by two Manitoba statutes – the Credit Union Act and the Credit Unions and Caisses Populaires Act. Consumers joining a Credit Union become "shareholders" and their membership entitles them to have a voice in the operation of the Credit Union.

What Will They Lend Money For

Credit Unions have a range of loans very similar to the Chartered Banks, that is they provide long, intermediate and short term financing. As with the Banks, financial counselling for farmers is an invaluable service provided for farmers.

Types of Security Required

Long Term Loans

For long term financing, for example for the purchase of land, a Real Estate Mortgage is taken if an individual is requesting the loan and a debenture is used if a corporation is making the request. Along with the debenture, a personal guarantee or limited personal guarantee is normally required.

Intermediate and Short Term Loans

For these types of loans, security in the form of a General Security Agreement is required. Operating loans are reviewed and renewed every year.

Near Banks

The term Near Banks includes Finance Companies, Insurance Companies and Trust Companies.

What Will They Lend Money For

The Near Banks are not eager to become involved in farm financing because of the risks involved. The Finance Company will make loans for consumer goods as will the Trust Companies.

Types of Security Required

Finance and Trust Companies will give loans on the security of Chattel Mortgages or General Security Agreements. Interest rates charged by the Finance Companies are often very high and they will realize upon their security very quickly should you default.

Insurance Companies lend money against the cash surrender values of life insurance policies held by the consumer. The rate of such loans are lower than standard consumer rates because the money being borrowed is in reality the consumer's money.

Manitoba Agricultural Credit Corporation (M.A.C.C.)

The M.A.C.C. is a provincially created farm financial institution established to provide fixed rate term loans, credit assistance through loan guarantees and special assistance programs to farmers. Financial counselling is an important aspect of the program.

What Will It Lend Money For

The M.A.C.C. will give long term and intermediate term loans to individuals for the purchase of land, machinery and breeding stock, the construction of buildings and housing, land improvements and debt consolidation. Also available are special loans for young farmers as well as cooperatives, corporations and partnerships and loan guarantees for operating loans through lending institutions.

Types of Security Required

The M.A.C.C. will take a land mortgage, chattel mortgage or a general security agreement. The M.A.C.C. requires that all loans be insured. If the borrower is a corporation, cooperative or partnership it will be necessary to sign a personal guarantee.

Farm Credit Corporation (F.C.C.)

The F.C.C. is a Crown corporation established at a time when most long term financing was handled by Life Insurance Companies. Today, the F.C.C. is one of many long term financers. Besides providing long term loans, financial counselling is provided.

What Will It Lend Money For

Loan funds may be used for:

- purchasing farm land;
- making permanent improvements to land and buildings;
- purchasing breeding stock and farm equipment;
- debt consolidation; or
- any purpose that will facilitate the efficient operation of the farm.

Loans are available for up to 30 years and are available for individual farmers, beginning farmers, partnerships, farming corporations and cooperative farm associations.

Types of Security the F.C.C. Requires

Loans are secured by a mortgage on farm lands and any additional loans are secured by a mortgage on farm lands and any additional security which the corporation may require, such as a chattel mortgage on livestock and equipment. In higher risk situations, a General Security Agreement is often required.

Accommodating security, that is, a loan on the security of the property of a third party (relative, friend, etc.) is sometimes a possibility.

If the borrower is a farm corporation, it will sometimes be necessary to sign a personal guarantee.

Federal Business Development Bank

The F.B.D.B. is a crown corporation established to provide loans to small Canadian businesses.

What Will It Lend Money For

The F.B.D.B. provides two types of loans for intermediate term financing, available for one to five years – a fixed loan (similar to a mortgage) and a floating loan (similar to a General Security Agreement).

Types of Security Required

The F.B.D.B. takes mortgage securities, chattels and general security agreements for its loans.

Dealers And Suppliers

Types of Financing Offered

For larger purchases, such as machinery, cars, trucks, etc., dealers will make use of the conditional sale agreement which gives them more control over the assets by preserving title until payment has been made and allowing repossession upon default of payment.

For operating purchases, such as seed, fertilizer, feed, etc., trade credit is used. Each company will have different conditions they expect you to abide by and these should be fully understood. The evidence of the existence of the agreement will often be only an invoice or an account in a bank, so it is up to the buyer to keep his/her own accounts.

Failure to keep up with your trade accounts could result in a repossession under a Conditional Sales Agreement or a court judgment could be sought against you for the amount owing.

Private Sources

Types of Financing Offered

This type of financing is often a casual arrangement between family members and is evidenced by an oral agreement or a promissory note. Also included in this category would be more formal arrangements with a corporation, evidenced by a promissory note.

THE FARMING OPERATION

From the preceding discussion on the types and sources of credit available, we can now move on to look at how credit is used in your farming operation and the special laws governing different situations.

Purchasing Land

Types of Security Agreements Available

When real estate is involved, the only possible financing is by way of a mortgage. Fixtures, objects attached to the land so as to be a part of it, are included in land, so the farm house if sold separately from the fields, must also be financed by a real property mortgage.

Of course, it is possible to buy land outright with cash and not have to worry about financing. However, this is not a common occurrence.

Another possibility, although not very common today, is to use an Agreement for Sale. The purchaser agrees to pay the seller by installments over a period of time. The seller retains title until the full purchase price has been paid. The purchaser is granted possession so long as he keeps up his payments. If the purchaser defaults, the seller can regain possession of the land. The purchaser can protect his interest by filing a caveat in the Land Titles Office. A caveat is a caution that there is an outside interest in the property.

Steps To Take With Mortgage Financing

Once suitable property is located make an Offer to Purchase, a written document laying out the description of the land, the price one is willing to pay and how the purchase will be financed. Along with the Offer, a deposit must be included to indicate the seriousness of the transaction.

It is advisable to contact a lawyer before submitting an offer. After the documents are signed it may be too late to do anything about unwanted consequences.

An Offer to Purchase often will be made conditional upon the purchaser finding financing. It is advisable that this condition be included in the Offer to Purchase, so if the lending institutions all refuse a loan, it is not a binding contract. As soon as the seller signs the Offer, it is a binding contract, as long as the buyer finds financing.

An Offer to Purchase may be made conditional upon numerous other events or situations, such as repairs being made or the appliances (fridge, stove, etc.) being left with the house. If the seller accepts these conditions, he/she must make a reasonable effort to satisfy them. If they cannot be met, the Offer to Purchase is cancelled.

The Dower Act

The Dower Act is a provincial statute that was designed to protect a spouse's interest in the other spouse's property, particularly the family home.

Effects Of The Dower Act On Land Sales

If the sale includes the homestead, a dwelling house occupied by the owner and his/her spouse as their home and not more than 320 acres, then the seller's spouse must give consent to the sale.

Similarly, if the homestead is being given as security in a mortgage agreement then your spouse's consent is required.

Without the Dower consent in these two cases, the sale agreement or the mortgage agreement is invalid.

Getting A Clear Land Title

First of all, a clear title means there are no other mortgages, liens, or caveats on the land that will become the buyer's responsibility upon the sale. The Offer to Purchase can be made conditional upon obtaining a clear title. An individual or his/her lawyer should search the property. A search can be done for a small fee at the Land Titles Office. If an individual decides to do the search and then finds that the document is confusing, consult a lawyer.

Easements

An easement is a right enjoyed by someone over the land of another. Public utilities such as hydro, and telephone companies often have easements over land. This usually means they can come on to your land to fix hydro lines, etc. These rights will be registered on the title, and become a permanent charge against the land. A potential purchaser should inquire into any easements on the property, and as to how they will hinder the use of the land.

Purchasing Farm Machinery and Equipment

Types of Financing Available

A farmer can seek a loan from the Banks giving a chattel mortgage or General Security Agreement on the security of the machinery or equipment they are buying. He or she is then responsible to the bank for payments.

However, in most cases, financing is available by conditional sales agreement or promissory note from the dealer.

A Conditional Sales Agreement defined under the Farm Machinery and Equipment Act is allowed to accompany a financing agreement. Title remains with the seller until the debt is paid.

The Farm Machinery and Equipment Act

The purpose of the Farm Machinery and Equipment Act is to protect the interests of farmers in their dealings with farm machinery and equipment suppliers. The Act applies to all sales of *new* farm machinery and equipment in Manitoba. The Act does not apply to the sale of used farm equipment by a dealer or to the sale of farm equipment by farmers by auction or in the ordinary course of their farming business, nor to the sale of farm machinery by an executor or administrator of an estate, nor by a public official acting under judicial process.

In the case of the sale of *used* machinery by a dealer, the farmer can either rely on the Consumer Protection Act or Sale of Goods Act. In the case of an auction, private sale, etc., the farmer is subject to caveat emptor – let the buyer beware! These will be discussed in greater detail under Purchasing Consumer Goods.

The Act defines farm machinery and equipment to mean any farm machine or equipment that has a retail selling price of $1000 or more and is used or intended for use in any type of farming operation. Cars, farm trucks, and snowmobiles are not included in this definition.

Procedure Followed Under the Act When Payments Are Defaulted

The Farm Machinery and Equipment Act allows the machinery to be repossessed upon default but only after the conditional sales seller has obtained permission from the Farm Machinery Board. The seller must notify the buyer that he has sought the Board's approval. The buyer then has one week to object by letter.

The Board makes its decision within four weeks. It will consider the following factors in making its decision:

- the purchase price;
- depreciation;

- amount by which the buyer is in default;
- the buyer's equity in the machine;
- interest rates;
- length of time the buyer is behind in payments;
- location and condition of equipment;
- ability of buyer to pay at a future date.

If the Board decides to allow the seller to repossess the machinery, the seller must notify the buyer after repossession of the whereabouts of the machinery and how much is owing. The seller must hold the machinery for ten days (not including Saturday, Sunday and holidays) to give the buyer an opportunity to come up with the payments. Within that ten days, the buyer can apply to the Court of Queen's Bench for an order revoking the Board's decision.

Repossession of the machinery completely discharges the debt. If the sale does not cover the debt plus expenses incurred by the sale, the buyer is not responsible for making up that difference. If there is a surplus after the debt and costs have been paid, this amount must be returned to the buyer.

Other Provisions of the Act

The Farm Machinery and Equipment Act also provides the farmer with many other rights concerning the operation of the farm machinery, most of which are not within the scope of this booklet. Information on them is available from the Farm Machinery Board. Following is a brief summary of these provisions.

The Act provides warranties on new machinery. It also gives the buyer the right to cancel a contract if the dealer cannot deliver the machinery by the date specified in the contract. If the purchaser decides to accept late delivery, the dealer must provide alternative equipment or pay the rental rate for similar machinery until such time as the new machine arrives. The Act also provides for a minimum trial period of ten days. If the machine is not operating as it is supposed to the dealer has seven days to repair. If it still doesn't perform as it should, the buyer can cancel the contract by sending the dealer a registered letter. The dealer must then return all monies paid by the buyer.

The Act makes provisions for repair parts and emergency service. Repair parts must be available for ten years from the date of purchase. Further, the buyer must be allowed to order emergency repair parts from 8 a.m. to 10 p.m. on any day except Sunday during the season of use. The parts must be delivered to the buyer within 72 hours of the buyer making the order (not including Saturdays, Sundays and holidays). If they are not, and it is not because of factors beyond the dealer's control (eg. strikes), then the

dealer is responsible for normal rental rates for that piece of equipment.

A fuller explanation of these provisions of the Farm Machinery and Equipment Act is available from the Farm Machinery Board or from your dealer.

Purchasing Intermediate and Current Assets

These assets would include items such as seed, feed, fertilizer, chemicals, fuel, cars, trucks, feeder cattle, etc.

Types of Financing Used

This type of purchase, if obtaining a loan from a Chartered Bank, is secured by Section 178 security. The purchase of cars, trucks, snowmobiles, etc. is not included in the Section 178 security but rather is usually covered by a Conditional Sales Agreement, General Security Agreement, or Chattel Mortgage. (This type of purchase will be covered more thoroughly under Purchasing Consumer Goods).

If obtaining financing from a Credit Union, a General Security Agreement will be required to secure the operating loan.

A final option available is to purchase the assets on trade credit. This is the most expensive route as the interest rates will be higher than at a Bank or Credit Union.

Purchasing Consumer Goods

"Consumer goods" is a very broad term including anything you may purchase, besides real estate. Farm machinery, although consumer goods, is dealt with by the law as a separate item. Current assets and livestock, crops, etc. are not considered consumer goods. Some examples of consumer goods are televisions, electrical appliances, clothing, dishes, cars, snowmobiles, etc. Consumer goods are those things that are to be consumed and not those things used as investments or used in one's business operations. Corporate purchasers are not protected by the Consumer Protection Act.

Types of Financing Available

The bulk of consumer goods are paid for by cash or are paid for on credit by the use of a credit card. For large items, where financing is required, trade credit is often used. However, it is also possible to get loans from lending institutions, Banks, Credit Unions, Finance Companies using the Chattel Mortgage or the General Security Agreement as security.

Statutes Affecting the Purchase of Consumer Goods

Two statutes are very important to our present study – the Sale of Goods Act and the Consumer Protection Act.

The Sale of Goods Act

The Sale of Goods Act applies to all transactions where there is a sale of goods, ie. moveable property. The Act provides some protection to those people buying goods and then discovering that the goods are defective. Additional protection is provided by the Consumer Protection Act and in the case of farm machinery, the Farm Machinery and Equipment Act.

Under the Sale of Goods Act, if the goods are purchased from a dealer and are not of the proper quality, the buyer has the right to reject the goods unless he has accepted them by:

- letting the seller know he is satisfied with the goods;
- doing something with the goods, for example selling them or mortgaging them, that indicates that he is the owner;
- retaining the goods beyond a reasonable time after discovering the defect.

In addition, the right of the seller to sell the goods and the right to expect the bulk to be the same as the sample in a sale by sample, are conditions guaranteed by the Act in all sales. A "condition" is an important term, the breach of which permits the buyer to reject the goods and cancel the contract.

Warranties guaranteed by the Act, such as the right to undisturbed possession of the goods and that the goods be free from encumbrances and favour of third parties, are treated as minor terms and the breach of these only entitles the buyer to sue the seller for damages.

The Act further provides that if grain or sugar beets are sold by the farmer to a grain dealer or operator of a beet sugar factory, then these people will receive good title to the produce as long as they were unaware of any previous liens or mortgages on the produce. However, farmers will not be freed from their other obligations to lenders by selling the produce used as security to their lenders because they can be sued for judgment and the proceeds from the sale to the grain dealers will probably be claimed by the lenders.

The Consumer Protection Act

The Consumer Protection Act applies to all retail sales of goods and services made by a seller in the course of his business, as long as the following four requirements are met:

- the goods must not be bought for resale;
- the goods must not be sold to a corporation;

- the price of the goods or services must not exceed $25,000, and
- the goods or services must not be used for the primary purpose of carrying on a business.

The Act does not apply to any sale of farm machinery and equipment to which the Farm Machinery and Equipment Act applies.

The following are some of the major provisions of the Consumer Protection Act:

- **Door-to-Door Sales**

All door-to-door salespersons must be licensed. Make sure this licence is shown to you before you deal with such a person and accept no excuses of this licence being left elsewhere.

The Act gives consumers four days to have second thoughts about the contract they signed. The sale can be cancelled within four days by sending the company written notice or by visiting them in person. A phone call is not sufficient. You are then entitled to your money back and you must return the goods. The name of the firm and the address where you can send a cancellation notice must be given to you at the time of the sale.

- **Disclosure of Cost of Borrowing**

Under the Act credit buyers and money borrowers have a right to know exactly how much the buying and borrowing is going to cost them. The financing agreement must include the amount of interest to be paid and what the total will be; the cost of charges such as Insurance premiums, if any; registration fees for registering documents at the Personal Property Registry; the due date and frequency of payments; the unpaid balance of the cash sale price; delivery charges and cash prices of any services included in the sale.

- **Debt Prepayment**

The Act permits buyers and borrowers to prepay their debts at any time before the full amount falls due. Where this is done, the seller or lender can only collect the amount of the loan or purchase, plus credit costs that have been earned to date.

- **Relief Against Acceleration and Forfeiture**

These provisions, protecting a debtor in arrears from being forced to pay the entire purchase price immediately and from having his goods seized after paying the arrears, have been discussed earlier and so will not be discussed further here.

- **Warranties**

The Consumer Protection Act provides certain guarantees as to the condition and quality of the goods bought. The warranties cannot be denied by the seller by putting in the contract that he/she will not guarantee the quality of the goods. Where there is a breach of these warranties, the Consumer's Bureau should be contacted.

The statutory warranties include:

- the seller has the right to sell the goods;
- the buyer shall enjoy quiet possession (uninterrupted use of the goods and the right to ownership) of the goods if bought by cash and shall have quiet possession as long as payments are kept up if bought on credit;
- the goods are free from any encumbrances in favour of a third party;
- the goods are new unless otherwise described;
- the goods are of a quality suitable for their purpose;
- the goods correspond to their description;
- where the goods were sold by sample, the bulk corresponds to the sample;
- if the buyer relies on the seller's judgment to provide goods suitable for a particular purpose, the goods must be fit for that particular purpose.

Repairs To Buildings (Purchasing A Service And Materials)

Types of Financing Available

For lower priced repairs, Banks, Credit Unions, the Farm Credit Corporation or the Manitoba Agricultural Credit Corporation will provide loans. The security provided will be a chattel mortgage or more commonly, a General Security Agreement.

For larger, more major repairs or additions, a real estate mortgage will be required in order to secure the loan.

Safeguards Against Unsatisfactory Work

The best safeguard is a careful choice of who to get to do the work. Get several estimates that describe the work to be done, list the materials to be used and their brand name, quantity, grades, colour, etc., labour requirements, cost breakdown, total cost, amount of deposit, starting and completion date and any guarantees or warranties that the contractor will stand by. Any guarantee or warranty in writing that is not lived up to entitles you to sue for breach of contract and get damages.

Also, check into each company from whom you have an estimate. Check with the Better Business Bureau to see that there have been no complaints lodged. Talk to people who have had work done by the company.

Most important of all, ensure that everything you want as regards to quality, quantity, performance, etc. is written into the contract. Before signing contracts for larger deals, consult a lawyer and have him/her approve the contract.

Protection Against Property Liens

The Builder's Lien Act covers all commercial and residential construction. You are entitled to hold back 7 1/2% of the total cost of labour, services and materials for 40 days after the contractor has reached substantial or total performance of the job.

Suppliers, employees or sub-contractors of the contractor can file a lien against your property if, for some reason, the contractor is not able to pay them. If such persons file a lien within the 40 day limit, you can use the money that you held back to pay them. If such a situation arises, consult your lawyer before taking any action.

Summary

In all areas of your farming operation, you may need to purchase goods or assets on credit. The above has been a brief overview of the types of concerns that you may face. DO REMEMBER, THOUGH, THAT IF IN DOUBT, SEEK PROFESSIONAL HELP. It could save a lot in the end.

So far, we have looked at the use of credit and the different types of security agreements available for different types of purchases and what you can expect if you default in your payments. However, the failure to make payments usually signals more serious problems to all your creditors and to yourself. How to deal with financial difficulties and what happens when all options are gone, is the next area of discussion.

FACING FINANCIAL DIFFICULTIES

The number of farmers in Manitoba who use credit is increasing continually. Given the rapidly increasing price of farm land and machinery and input costs, this can only lead to more credit use and higher debt loads. As a result, many farmers face different problems.

Financial problems do not mean disaster as long as quick action is taken. That is, one must realize that financial problems do not simply disappear and therefore, the time to deal with problems is when you first realize that you are not going to be able to make all your loan payments. It is a little late to try to do something once the sheriff has arrived at the door with orders to repossess the tractor or to seize the grain.

Steps to Take to Avoid Financial Difficulty

Financial difficulties may often be due to external factors, such as bad weather, illness, etc. However, several measures can be taken that will decrease the burden of financial worries.

- Keep good records. Unless an accurate record exists of what one has or doesn't have, (ie. what assets – land, machinery, grain on hand, supplies on hand, etc.) and liabilities (debts) exist, it will be most difficult for you to make wise decisions on the use of your funds.
- Before taking out any further loans or incurring debts, you should figure out whether you can reasonably expect to make the additional payments on top of your current commitments.
- Before troubles begin, it is a good idea to consult professionals for advice. Your accountant, bank manager or farm management counsellor can be of assistance.
- A farmer should do periodic reviews of his/her farming operation. Are hogs really profitable? How about custom combining; is it truly worthwhile to do custom work?
- Farmers should consider seriously insuring themselves to cover the possibility of them getting hurt. Insurance is available through private

insurance companies, through various farm organizations, or through the Workers' Compensation Board.

- The Crop Insurance Program allows farmers to insure their crops against a deficiency in yield or any loss caused by poor quality, unless the loss was due to the farmer's negligence, neglect, misconduct or poor farming practices.
- Fire or other insurance is recommended also. There is no point inviting disaster. As the old saying goes, "An ounce of prevention is worth a pound of cure".

Steps To Take When Unable To Make Payments

The first and most important step is to communicate with creditors immediately. Delay can only make the problems worse. It is possible to work out a new arrangement with the creditors which is more feasible.

If you receive a demand letter from your creditors, do not avoid it but immediately let the creditors know of your present situation. The same applies if you receive legal documents or letters from a lawyer. Seek legal advice immediately and do not let things go unattended. A lawyer may be able to forestall further legal action. The fewer steps taken in a lawsuit, the lower the costs.

If a farmer owes income tax that he/she cannot pay, immediately contact the Income Tax Department. Most reasonable proposals for payment of the money will not be refused. However, if you do not contact them, the tax department does not need to go to court to sue for payment. It simply sends a demand letter to the farmer's bank or to the elevator company or stockyard buying from him/her. These organizations cannot refuse to pay.

Possible Solutions

Management Decisions

A farmer should first of all review his/her farming operation. Sometimes financial problems can be solved by restructuring debts, improving management, increasing yields and the like.

Arrangements with Creditors

Often times, especially if difficulties are due to external factors, such as illness, bad crops, etc., creditors will be willing to extend the time for payment. However, one should be realistic in his or her ability to pay, with the existing plan even when the payments are extended. If repeated visits are made the risk of trying the creditor's patience is increased.

Some of the options available in negotiations with creditors include:

- A freeze on debt payments until more financially stable. This could mean paying the principal or interest only or nothing at all for a period of time;
- An extension of the time for payments;
- A reduction in the amount owing to unsecured creditors. This amount would have to be better than what they could get if you were to declare bankruptcy.

Refinancing the Loan

Refinancing often means paying off a lot of short term debts by obtaining a longer term consolidated loan. The Farm Credit Corporation, the Manitoba Agricultural Credit Corporation, Banks, and Credit Unions will grant a refinancing loan if it means the farming operation will be strengthened. In considering whether or not this type of loan is a solution to your particular problem, the lending institutions will consider the following aspects:

- The level of farm management ability;
- The level of financial management ability;
- What specific debts are to be consolidated;
- Can the security position be improved;
- The length of time necessary for orderly repayment;
- Will future spending or expansion be controlled;
- The applicant's age.

Refinancing may also mean contacting all your creditors and asking them to renegotiate your loan to allow for a longer repayment term. Realism is important in this case. Creditors will not renegotiate a loan if you could never be expected to meet your payments. They need some evidence before them that this loan will benefit your operation and help make your operation more viable.

Orderly Payment of Debt Provisions

The Orderly Payment of Debt provisions were designed to provide a simple and inexpensive way for debtors, who are unable to meet all their obligations, to pay back all their creditors. In Manitoba, there is no monetary limit to the amount of debts you can have to fall within these provisions. These provisions do not apply to debts owing to the government, terms within a mortgage, agreements for sale of land, or debts incurred by a trader or merchant in the ordinary course of business.

Only the debtor can apply to have these provisions operate.

The debtor applies to the clerk of the Court of Queen's Bench, for a "consolidation order", filing an affidavit as to his/her personal situation, income, debts and assets. The clerk, upon acceptance of the application, sets the

times for payment and the amounts. Any objection by a creditor may be heard before the clerk of the Court or a judge of the Court of Queen's Bench.

The making of a consolidation order means that no other process may be issued by a Manitoba Court against the debtor (eg. garnishing of wages or income). This step of proceedings does not mean, however, that a farmer can no longer voluntarily declare bankruptcy. However, you must have a legitimate reason for doing so. Secured creditors may elect to rely on and repossess their security despite their inclusion in the consolidating order.

If you should default in your orderly payments (which are paid into court and distributed amongst your creditors) for more than 90 days, all creditors listed in the order are entitled to proceed independently of each other for the enforcement of their claims, relying on the judgment granted through the consolidation order.

A Proposal Under the Bankruptcy Act

A proposal is an offer to creditors to pay them less than is owing to them so that all creditors are paid something.

This is really only a solution if the creditors will receive more under the proposal than they would in a bankruptcy and there is a reasonable prospect that the terms of the proposal will be met. A proposal may be made by a farmer who has already assigned himself into bankruptcy or who is insolvent and facing bankruptcy.

The debtor must make an offer to his unsecured creditors. Secured creditors will not be included in a proposal. They only need to realize on the security to be paid. If a majority of the creditors who attend a special creditors' meeting and who hold three-quarters of the value of the claims, approve the offer, then it is binding on all. It must be approved by the court before it becomes effective.

Once a proposal is approved it has the following effects and consequences:

- The proposal is binding on all creditors except secured creditors and on the debtor;
- The debtor continues to own his own farm and control it;
- Unsecured creditors can take no further independent action against the debtor;
- Secured creditors are still able to realize upon their security;
- A stay of proceedings can be extended against a secured creditor for six months;
- The debtor must appoint a trustee and all payments will be made to creditors through the trustee.

Before making a proposal, it is wise to consult a lawyer or your accountant.

Liquidation of Assets

Another alternative is to sell some of your assets (eg. part of your land, part of your cattle herd, etc.) to pay off your debts.

Tips

When faced with financial troubles, do not delay in seeking professional help and opening up negotiations with your creditors. Delay only adds to the problem so act quickly in finding the best solution to your financial difficulties.

BANKRUPTCY – THE LAST RESORT

When all else fails, bankruptcy may be the only solution. Bankruptcy is a method by which honest debtors can escape their creditors and start afresh.

Difference Between Bankruptcy and Receivership

Bankruptcy is available to both secured and unsecured creditors. All the assets of a debtor except those exempt under the Judgments Act and the Executions Act, are transferred to a trustee in bankruptcy who sorts out the claims of all creditors and distributes the proceeds from the farm on basis of priority of claims.

Receivership is available only to certain secured creditors. A receiver appointed by a creditor is responsible for ensuring that a particular creditor is satisfied.

Farmers Exempt From Being Petitioned Into Bankruptcy

A farmer cannot be petitioned into bankruptcy. Farmers can only voluntarily assign themselves into bankruptcy.

Consent For Appointing A Receiver

A secured addition under a General Security Agreement or a Debenture does not require the farmer's or the court's consent to appoint a receiver. Instructions are given to the receiver to take over managing the farm.

Steps in Bankruptcy

The first step is to contact a licenced trustee in bankruptcy if you feel bankruptcy is the only answer. The trustee will then do a financial analysis of your whole farming operation to determine if in fact bankruptcy is the only solution.

If the decision is made to petition for bankruptcy, the trustees will draft a statement of affairs to be sent to all creditors. A bankrupt (person in bankruptcy) must be truthful and disclose all his/her affairs.

The next step is a meeting of creditors. This gives the creditors a chance to make their claims known and to discuss the debtor's affairs.

The trustee then disposes of the assets, except those that are exempt, and distributes the proceeds to the creditors. The debtor cannot regain control of his/her assets until a discharge has been granted by the Court.

Although certain assets are exempt by the Executions Act or the Judgments Act, a creditor who holds valid security on that asset will not be prevented from realizing upon their security. If the asset is exempt under the Executions Act, a bankrupt may make an appointment with the secured creditor whereby the bankrupt will pay an estimated value of the security over time so property can be retained.

The final stage is discharge, the final release from any further obligation to your creditors. For an individual, the filing of an assignment in bankruptcy automatically operates as an application for a discharge. The hearing for discharge must be heard no earlier than three months after assignment and not later than twelve months after assignment. For a corporation, it cannot be discharged until 100 cents on the dollar is paid.

A discharge will not release the bankrupt from certain liabilities including liability for alimony and maintenance payments, liability arising out of fraud and liability for goods supplied as necessities of life.

Creditors may still have recourse against a third party who guaranteed the debtor's payments, even though the debtor has been discharged.

Responsibilities of the Bankrupt Debtor

A bankrupt debtor is required to reveal openly all his/her finances to the trustee and the creditors. Before the first meeting of creditors, the bankrupt will be required to attend an examination under oath as to all matters relating to his/her financial situation. Further examinations can be requested by creditors.

Any assets that may be acquired after the assignment in bankruptcy and before discharge must be reported to the trustee. They might be liable to be used by the trustee to settle the creditor's claims.

A bankrupt is not entitled to seek credit over $500.00 without notifying the lender of his or her bankrupt status.

CONCLUSION

Hopefully this booklet has provided you, the farmer, with a better understanding of the world of credit and financial management. It is a complex area and this booklet could only begin to touch on the various aspects of this field. For your individual difficulties, professional guidance from lawyers, accountants, bank managers and farm management counsellors should be obtained.

In times of trouble act quickly and get help. The longer you wait, the bigger the troubles become. The best way to avoid the difficulties is to plan ahead for various consequences and to seek out professional assistance immediately.

REFERENCES

References – Types of Securities

Bridge and Buckley, *Sales and Sales Financing in Canada* (Carswell, 1981).

Consumer Protection in Manitoba, Prepared and Issued by the Legal Profession of Manitoba.

Home Improvements Sold Door-to-Door (Manitoba Consumers Bureau).

On the dotted line (Manitoba Consumers Bureau).

Small Claims Court: Information and Procedures (Manitoba Department of Attorney-General).

Doug Steinburg, *Consumer Law* (P.L.E.A. 1978).

M.J. Sychuk and T.A. Peterson, *Principles of Farm Law for Alberta Farmers* (University of Alberta Printing Services, 1974).

Court of Queen's Bench Act, S.M. 1982-83-84, c. 81, 82.

The Court of Queen's Bench Small Claims Practices Act, S.M. 1982-83-84, c. 83.

Bank Act, R.S. 1970, B-1.

The Consumer Protection Act, R.S.M. 1970, C-200.

The Executions Act, R.S.M. 1970, E-160.

The Judgments Act, R.S.M. 1970, J-10.

The Mortgage Act, R.S.M. 1970, M-200.

The Sale of Goods Act, R.S.M. 1970, S-10

References – Sources of Credit

Financing Your Farm Business (Farm Credit Corporation of Canada).

Sources of Credit for Manitoba Farmers (Manitoba Department of Agriculture, 1976).

References – The Farming Operation

Gerald Ashcroft, *Manitoba Farmers and the Law* (P.L.E.A. 1982).

D.J. Purich, *Canadian Farm Law* (Western Producer Prairie Books, 1982).

Farm Management '83: A Manitoba Homestudy Course, Lesson 8: Farming and the Law. (Manitoba Department of Agriculture, 1983).

The Builder's Lien Act, S.M. 1980-81, C-7.

The Consumer Protection Act, R.S.M. 1970, C-200.

The Dower Act, R.S.M. 1970, D-100.

The Farm Machinery and Equipment Act, S.M. 1971, C-83.

The Sale of Goods Act, R.S.M. 1970, S-10.

References – Facing Financial Difficulties and Bankruptcy

Bankruptcy (B.C. Continuing Legal Education, Vancouver Seminar, 1982).

Dealings Between Creditor and Debtor (Legal Education Society of Alberta, 1982).

A.A. Parker and M. Culpepper, *Credit Law and Bankruptcy Handbook* (International Self-Counsel Press Ltd., 1975).

The Bankruptcy Act, R.S. 1970, B-3.

The Executions Act, R.S.M. 1970, E-160.

The Judgments Act, R.S.M. J-10.

APPENDIX

ADDRESSES

Consumers Bureau

307 Kennedy Street
Winnipeg, Manitoba
R3C 0V8
Winnipeg residents dial 956-2040
Out-of-Winnipeg residents call 1-800-262-8844 (toll free)
from anywhere within the province.
Office hours: 8:30 - 4:30 Monday to Friday

Better Business Bureau of Winnipeg

204 - 365 Hargrave Street
Winnipeg, Manitoba
R3B 2K3
(204) 943-1486
Office hours: 9:00 - 4:00 Monday to Friday

Department of Agriculture – Farm Management

Local Agricultural Offices.

Farm Credit Corporation

400 - 5 Donald Street
Winnipeg, Manitoba
R3L 2S6
OR Your local F.C.C. Office.
(204) 949-4039
Office hours: 8:30 - 4:30 Monday to Friday

Farm Machinery Board

914 Norquay Building
401 York Avenue
Winnipeg, Manitoba
R3C 0P8
(204) 945-3856
Office hours: 8:30 - 4:30 Monday to Friday

Land Titles Office

405 Broadway
Winnipeg, Manitoba
R3C 3L6
(204) 945-2042
Office hours: 8:30 - 4:30
Monday to Friday

Manitoba Agricultural Credit Corporation

1500 Notre Dame
Winnipeg, Manitoba
R3E 0P9
OR Your local M.A.C.C. office.
(204) 786-3401
Office hours: 8:30 - 4:30
Monday to Friday

Personal Property Registry

405 Broadway
Winnipeg, Manitoba
R3C 3L6
(204) 945-3123
Office hours: 8:00 to 4:15
Monday to Friday

Small Claims Court Offices

Beausejour	250 - 1st Street	268-1411 (ext. 112)
Brandon	1104 Princess Avenue	727-0579
Dauphin	114 River Avenue West	638-9111
Flin Flon	203 - 35 Main Street	687-7198
Killarney	417 Broadway	523-4262
Minnedosa	70 - 3rd Street S. West	867-2238
Morden	301 Wardrop	822-4488
Portage la Prairie	3rd Street S. East	857-5821
Russell	455 Main Street North	773-2980
St. Boniface	277 Provencher Boulevard	233-7061
Selkirk	321 B Main Street	482-5507
Swan River	201 - 4th Avenue South	734-2252
The Pas	300 - 3rd Street East	623-3491
Thompson	59 Elizabeth Drive	778-4111
Virden	247 Wellington West	748-1908
Winnipeg	2nd Floor, 405 Broadway	945-3138

GLOSSARY

A

acceleration	When a lender demands full payment of a loan before it is due, he or she is requiring an acceleration of the loan. This is unlawful in most circumstances.
arrears	Debts not paid at the due date.

B

bankrupt	A bankrupt is a person who has declared bankruptcy or has been petitioned into bankruptcy.
bankruptcy	A legal condition where you can no longer pay your debts and so have turned over all your affairs to a trustee in bankruptcy.

C

cash surrender value	The amount you would receive if you were to turn in your life insurance policy for cash. If a policy is used as security, the cash surrender value is the measure of the value of the security.
caveat	An entry made on the Certificate of Title of Land to warn others of the caveat holders interest in the land and to make any later registrations subject to the priority of the caveat holder's interest if otherwise valid.
chartered banks	Banks governed by a federal statute, the *Bank Act*.
condition	An important term of a contract, which, if breached, allows the party who did not breach the condition, to cancel the contract.
consumer goods	Goods, other than real property, that are bought for use by the person buying them. They are not bought for investment or business purposes.
contract	A binding agreement between two or more persons where each person agrees to do something. For example, in a contract for the sale of a car, the dealer agrees to provide the car and the buyer agrees to pay for it.
creditor	Someone who lends money to another with the expectation that that person will repay the debt.

D

debenture	A document creating a long term loan available to incorporated business, including a farming operation. It covers all business assets and allows for the appointment of a receiver upon default.
debt consolidation	The process of borrowing a large sum of money for a long term in order to pay off many short and intermediate term debts so you need only make one payment.
debtor	A person who owes money to another, a creditor.
deed	A written, signed and sealed agreement to prove an agreement between two or more parties to carry out an act. A deed is usually used to prove a sale of land between two persons.
default	Failure to pay a sum that is due according to a contract or the failure to do anything else required to be done by a contract.
discharge	The release from an obligation. For example, a bankrupt is discharged from his or her debts after the assets have been sold and the creditors satisfied.

E

easement	The right of one land owner to utilize the land of another in a particular manner. For example, Manitoba Hydro may have an easement so they can come on to your land and repair the hydro lines.
encumbrance	A charge or liability against property, eg. a mortgage or a lien.
exempt property	Those assets that are excluded from seizure, if unsecured, according to the *Executions Act* and the *Judgments Act*.

F

fixed credit	A loan made for a certain amount of money for a certain period of time.
fixtures	An object that is so attached to land or to a building on the land as to be considered part of the land.
foreclosure	The taking title to land by the lender when the borrower defaults on land mortgage payments.
forfeiture	The loss of the right to property when it is seized due to your default in payment of a debt. The Consumer Protection Act ensures that property cannot be forfeited when the debt is paid as in the security agreement.

I

insolvency	A financial condition where the debtor can no longer pay his or her debts.
intermediate term loans	Debts where the payments are spread over two to ten years. They are used for the purchase of machinery, farm buildings, breeding stock. The repayment term is usually based on the productive life of the asset being purchased.

L

Land Titles Office	The Provincial Government office where titles or interests in land are registered and can be searched.
lien	In its widest sense, a charge for payment of a debt or duty upon any kind of property. Liens may be either general or particular. A particular lien is the right to retain the thing for some charge of claim connected with the thing, such as a mechanic's right to retain a car he or she has repaired until the proper charges have been paid. A general lien is the right to retain the thing not only for such charges, but also for a general balance of accounts between the parties with respect to other similar dealings.
line of credit	A short term loan that is used for day-to-day expenses. The balance of the loan is allowed to fluctuate and the funds are automatically advanced as required, up to a certain amount.

M

mortgage	A document giving the lender security over either real or personal assets of the borrower so that in the event of a default in payment of the money lent to the borrower, the seller can sell the property to pay for the debt.
mortgagee	The lender of the mortgage debt.
mortgagor	The one who borrows the money.

O

operating loan	Loan obtained from Banks, Credit Unions for day-to-day expenses. The normal term of the loan is one year. The amount is advanced either at one time or periodically.

P

property	Any possession or asset that a person may own. Real property is lands, buildings, easements, right of ways, etc. Personal property is any kind of property other than real and includes corporate assets, business equipment, inventory, etc. as well as items such as furniture, cars, etc.
proposal	An arrangement for paying back debts that an insolvent debtor can make to his or her creditors. If the creditors accept it and the court approves it, it becomes binding on all unsecured creditors.

R

realize	To obtain money in return for property; to convert property into cash.
receiver	One appointed by a lender to take control of a business when the debtor has been unable to keep up payments on a loan secured by a General Security Agreement or a Debenture.
repossession	The taking back of an item by the seller when the buyer on credit has failed to keep up with payments.

S

secured creditor	A lender who holds as security for the debt a mortgage, charge or lien on or against the property of the debtor.
security interest	A claim in property which may allow the holder to repossess the property from whomever has it if the borrower defaults in repaying the loan.
seizure	The act of taking goods from the borrower in default at the order of the lender. A sheriff is often hired to seize the goods.
short term loans	Debts due in the next twelve months. This includes operating loans, lines of credit and trade credit.

T

title	The right to ownership of property. A clear title means no encumbrances have been placed against the title to the property.

U

unsecured creditor	A creditor who holds no security for a debt. In the event of bankruptcy, the unsecured creditor is paid last from the proceeds of the sale of assets and often does not recover the full debt.
unsecured property	Assets that are not security for a mortgage, general security agreement, Section 178 agreement, etc. The owner owns these assets free from any claims against them, unless an unsecured creditor secures a judgment and seeks to seize the property to satisfy the judgment.

V

variable credit	Upon signing a master agreement, the creditor agrees to make certain credit available to you to be used from time to time at your option. Some examples are credit cards and lines of credit.

W

warranty	A guarantee given to a buyer as to the goods being bought. The breach of such a guarantee entitles the buyer to damages.
waste	Whatever actions that do lasting damage to land or buildings or anything which alters the nature of the property; examples would be cutting down trees, tearing down a building or taking top soil.

By: Sharon Lee
Sponsored Jointly By:
Public Legal Education Activities
University of Manitoba
and
Manitoba Agriculture